REMARKS

In the February 17, 2010 Office Action, all of pending claims 1, 3-7, 10 and 11 stand rejected in view of prior art. No other objections or rejections were made in the Office Action.

Status of Claims and Amendments

In response to the February 17, 2010 Office Action, Applicant has cancelled claim 1 and amended claims 3, 5-7, 10 and 11 as indicated above. Also, Applicant has added new claims 13-18. Thus, claims 3-7, 10, 11 and 13-18 are now pending, with claims 3, 5, 6 and 7 being the only independent claims. Reexamination and reconsideration of the pending claims are respectfully requested in view of above amendments and the following comments.

Rejections - 35 U.S.C. § 103

On pages 2-7 of the Office Action, claims 1, 10 and 11 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent Application Publication No. 2004/0029266 (Barbera-Guillem) in view of U.S. Patent Nos. 6,429,008 (Copeland) and 4,336,329 (Hesse). Claims 3-7 are rejected as being unpatentable over the Barbera-Guillem publication in view of the Copeland patent and the Hesse patent and further in view of U.S. Patent Application Publication No. 2002/0098117 (Ammann) or U.S. Patent No. 6,518,059 (Butts). In response, Applicant has cancelled claim 1 and amended claims 3, 5, 6 and 7 to place them in independent form. The rejections of these independent claims are respectfully traversed as explained below.

The Office Action points out "Each cassette 100, 830 is coupled to heating/cooling mechanism in the form of a conductor plate 1070 and Peltier element 1060. Paragraph [0327] further indicates that each cassette is in communication with a temperature sensor 1.080 and a control unit 1055 provided within the communication unit" in the Barbera-Guillem publication. In paragraph [0327] of the Barbera-Guillem publication, "communicate" or "communication" are referred to in the following six points.

(i) The power source 1050 is in electronic communication with (a plurality of) control electronics 1055 that are also connected to a control switch or switches

1057 that can be configured to actuate the container 1000 for cooling or heating/incubation operation, and which can be further adapted in various configurations to control temperature and other contemplated capabilities of the container 1000 (see page 42, lines 6-13).

(ii) A thermoelectric device 1060 is also in electronic communication with the control electronics 1055 and is preferably thermally separated from the control electronics 1055 by an insulator 1062 (see page 42, lines 13-16).

(iii) Any of a number of types of thermal sensing devices, such as thermistors 1080 can be incorporated and placed in electronic communication with the control electronics 1055 (see page 42, lines 24-27).

(iv) The control electronics can adjust the voltage and current communicated to the thermoelectric device 1060 (see page 42, lines 28-30).

(v) Any of the smart card, induction coil, and other types of data communication capabilities contemplated herein (see page 42, lines 55-57).

(vi) Sensors can include data acquisition sensors that measure, store, and communicate temperature (see page 42, column 2, lines 2-4).

In (v) and (vi), the other side of communication is unclear, and in (iv), concept different from electronic communication is adopted by using the same word "communicate". (i), (ii), and (iii) disclose that control electronics 1055 is in communication with a power source 1050, a thermoelectric device 1060, and thermistors 1080. From the above, the assertion "Paragraph [0327] further indicates that each cassette is in communication with a temperature sensor 1080 and a control unit 1055 provided within the communication unit" pointed out in the Office Action is misunderstanding/misinterpreting the Barbera-Guillem publication.

On the other hand, the Office Action points out "Barbera-Guillem does disclose a plurality of independent "temperature control devices" in communication with each other and connected to each other within the communication unit. The Office Action further asserts that even if the "temperature control devices" of Barbera-Guillem do not include independent and discrete elements, it is additionally noted that the claims of the instant invention are broad and read on an arrangement in which certain individual elements (such as the heating

mechanism, cooling mechanism, control unit, etc.) of connected temperature control devices are mutually shared".

However, in independent Claims 3, 5, 6, and 7, it is a temperature control device that comprises a communication unit. Even if Barbera-Guillem does disclose a plurality of independent "temperature control devices" in communication with each other and connected to each other within the communication unit as stated in the Office Action, containment relationship between a temperature control device and a communication unit of that disclosure is opposite to that of the claims of the present application.

Furthermore, if it is understood that "a heating mechanism, a cooling mechanism, a temperature setting part, and a heating/cooling controller" are mutually shared in one container 1000 storing a plurality of tissue culture devices 100 and 730 of the Barbera-Guillem publication, as stated in the Office Action, even if considering that control electronics 1055 is in communication with a power source 1050, a thermoelectric device 1060, and thermistors 1080, the limitation "a plurality of temperature control devices being connectable to each other with the predetermined culturing temperatures being set independently" as recited in Claims 3, 5, 6, and 7 is not disclosed or suggested. It is because, if it is understood that "a heating mechanism, a cooling mechanism, a temperature setting part, and a heating/cooling controller" are mutually shared, culturing temperature cannot be set independently.

The remaining references do not account for the deficiencies of the Barbera-Guillem publication. In particular, the arrangement is the same for other cited references Copeland and Hesse as the Barbera-Guillem publication. Furthermore, the Ammann et al. publication and/or the Butts patent also lack a communication unit through which a plurality of said temperature control devices are connected to each other as claimed. Additionally, the Butts patent, which is relied upon in the Office Action to reject claims 3, 5, 6 and 7, teaches away from "a plurality of said temperature control devices being connectable to each other ***with said predetermined culturing temperatures being set independently***." In fact, the Butts patent uses a single master incubator in order to control the other incubators as acknowledged in the Office Action (see page 5). Accordingly, even if the references cited in the Office Action were combined as suggested in the Office Action, the hypothetical device created by this hypothetical combination would not include all of the elements of independent claims 3,

5, 6 and 7. Accordingly, withdrawal of these rejections of independent claims 3, 5, 6 and 7 is respectfully requested.

Moreover, under U.S. patent law, the mere fact that the prior art can be modified does ***not*** make the modification obvious, unless an ***apparent reason*** exists based on evidence in the record or scientific reasoning for one of ordinary skill in the art to make the modification. See, KSR Int'l Co. v. Teleflex Inc., 127 S.Ct. 1727, 1741 (2007). The KSR Court noted that obviousness cannot be proven merely by showing that the elements of a claimed device were known in the prior art; it must be shown that those of ordinary skill in the art would have had some "apparent reason to combine the known elements in the fashion claimed." Id. at 1741. The current record lacks any apparent reason, suggestion or expectation of success for combining the patents/publications, and then further modifying the hypothetical device created by this hypothetical combination in order to create Applicant's unique arrangements of independent claims 3, 5, 6 and 7.

Moreover, Applicant believes that dependent claims 4, 10 and 11 are also allowable over the prior art of record in that they depend from independent claim 3, and therefore are allowable for the reasons stated above. Also, dependent claims 4, 10 and 11 are further allowable because they include additional limitations, which in combination with the limitations of independent claim 3, are not disclosed or suggested in by the prior art. Therefore, Applicant respectfully requests that these rejections as applied to these dependent claims be withdrawn in view of the above comments and amendments.

New Claims

Applicant has added new claims 13-18 by the current Amendment. New claims 13-15 are new dependent claims that correspond to amended claim 10, but depend from amended claims 5-7. New claims 13-15 are believed to be allowable at least by virtue of their dependence from independent claims 5-7. New claims 16-18 are new dependent claims that correspond to amended claim 11, but depend from amended claims 5-7. New claims 16-18 are believed to be allowable at least by virtue of their dependence from independent claims 5-7.

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In view of the foregoing amendment and comments, Applicant respectfully asserts that claims 3-7, 10, 11 and 13-18 are now in condition for allowance. Reexamination and reconsideration of the pending claims are respectfully requested. If there are any questions regarding this Amendment, please feel free to contact the undersigned.

Respectfully submitted,

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